

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WILLIAM DESHIREE THOMAS,

Defendant-Appellee.

UNPUBLISHED

June 20, 2013

No. 309957

Eaton Circuit Court

LC No. 11-203742-FH

Before: BECKERING, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

In this criminal proceeding, the prosecution appeals by leave granted from the circuit court's order granting defendant William Deshree Thomas's motion to suppress evidence. We reverse and remand.

On November 5, 2011, Eaton County Sheriff's Officer Albert Sidel detained defendant outside of a Meijer store, suspecting that he was in possession of stolen merchandise. Upon searching defendant's backpack, Meijer loss-prevention officer Connie Whitford discovered several stolen liquor bottles and a loaded semi-automatic handgun. The prosecution charged defendant with third-degree retail fraud, MCL 750.356d(4), carrying a concealed weapon, MCL 750.227, possession of firearm by a felon, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b.

Defendant filed a motion to suppress the evidence discovered in his backpack, arguing that he had been subjected to an unlawful search and seizure. The parties relied on the preliminary-examination testimony in lieu of an evidentiary hearing. The circuit court granted defendant's motion to suppress, finding that Officer Sidel detained defendant without a reasonable, articulable suspicion that he had committed a crime. At the same time, the circuit court granted plaintiff's motion to stay the proceedings so that plaintiff could seek an interlocutory leave to appeal, which this Court subsequently granted.

"This Court reviews a trial court's findings of fact at a suppression hearing for clear error and reviews de novo questions of law and the trial court's ultimate decision whether to suppress the evidence." *People v Crockran*, 292 Mich App 253, 256; 808 NW2d 499 (2011). Fourth Amendment challenges are also reviewed de novo. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009).

Both the state and federal constitutions protect individuals from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, §11. Generally, if a police officer “has a reasonable, articulable suspicion” that an individual has committed a crime, the officer may briefly detain and investigate that individual, even if the officer does not have probable cause to make an arrest. *People v Barbarich*, 291 Mich App 468, 473; 807 NW2d 56 (2011). The scope of the search or seizure “must be limited to that which is necessary to quickly confirm or dispel the officer’s suspicion.” *Id.* This Court determines whether a reasonable, articulable suspicion exists on a case-by-case basis, considering the totality of the circumstances, consistent with common-sense judgments and inferences of human behavior. *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005).

Police officers may rely on tips from citizen informants when determining if they have a reasonable suspicion of criminal activity that would justify detaining a suspect. *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993). But the information supplied must carry “sufficient indicia of reliability.” *Id.* As such, this Court must consider “(1) the reliability of the particular informant, (2) the nature of the particular information given to the police, and (3) the reasonability of the suspicion in light of the above factors.” *Barbarich*, 291 Mich App at 474, quoting *People v Toaks*, 403 Mich 568, 577; 271 NW2d 503 (1978). The absence of one factor does not require the conclusion that a reasonable suspicion does not exist. *Faucett*, 442 Mich at 162. “Rather, deficiencies in one may be compensated for by strengths of the other, or by other factors.” *Id.*

Considering the totality of the circumstances, we conclude that the lower court erred by granting defendant’s motion to suppress. Whitford had been watching defendant while he was moving through the store because she suspected that he was shoplifting. After following defendant through the sporting-goods aisle, she witnessed him abandon a shopping cart filled with large towels and walk toward the health and beauty department. Defendant was “acting suspicious” and had a backpack on his shoulder at the time. Whitford then returned to the loss-prevention office to meet with Officer Sidel, who was at the store for another matter.

While in the loss-prevention office speaking with Officer Sidel, Whitford received a call from another store employee, Shane Arnold, who said that there was a suspicious person in the men’s bathroom. Arnold told Whitford that he could hear the person clinking liquor bottles. Arnold also told Whitford that he found liquor security caps inside the bathroom stall after the person left the bathroom.¹ While she was speaking on the telephone with Arnold, Whitman was also trying to talk to Officer Sidel at the same time, telling him about a gentleman in the store who was possibly stealing alcohol. Whitford returned to the sales floor, and Arnold identified defendant as the suspicious person from the bathroom. Whitford noticed that defendant’s backpack, which had seemed flat the first time she saw him, appeared fuller. Whitford said that

¹ It is unclear from the record whether Arnold found the security caps before or after his telephone conversation with Whitford and defendant’s detention. But even assuming that Arnold found the security caps after the telephone conversation and defendant’s detention, we would still conclude that Officer Sidel had a reasonable suspicion of criminal activity.

she continued to follow defendant until he exited the store without purchasing any merchandise. Once defendant left the store, Whitford motioned for Officer Sidel, who was waiting outside, to stop him.

As defendant exited the store, Officer Sidel, in full uniform, twice told defendant to come to him. Defendant hesitated, so Officer Sidel, suspecting that defendant was considering whether to run, pushed defendant against a wall. Defendant dropped the backpack to the ground, and Officer Sidel heard “glass clinking together.” Officer Sidel secured defendant with handcuffs, and Whitman looked inside the backpack, where she found liquor bottles.² She searched the bag more extensively and found a number of Meijer’s merchandise items that had not been paid for as well as a loaded handgun.

The evidence shows that Whitford had a reasonable suspicion that defendant was shoplifting store property, namely alcohol. Further, the information Whitford provided to Officer Sidel had sufficient indicia of reliability to justify an investigative stop. As a loss-prevention officer, Whitford should be considered a reliable informant; she has worked in that position for about 10 years, arguably gaining a level of expertise that would render her observations credible. See generally *People v Steele*, 292 Mich App 308, 310, 315-316; 806 NW2d 753 (2011) (recognizing that a Meijer loss-prevention officer with training and experience regarding the recognition of methamphetamine precursors provided reliable information to a police officer to form a reasonable suspicion of criminal activity). In addition, Whitford provided Officer Sidel with sufficiently detailed information. She physically identified defendant, told Officer Sidel that she suspected him of shoplifting, and notified Officer Sidel once defendant left the store. Considering the totality of the circumstances, Officer Sidel was justified in relying on the information Whitford provided. Because Officer Sidel did not unlawfully search defendant, the lower court should not have granted defendant’s motion to suppress.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Henry William Saad
/s/ Peter D. O’Connell

² It is worth noting that pursuant to MCL 764.16(d), Whitford herself, as an employee of a merchant, had statutory authority at the time to arrest a person based on a reasonable cause to believe that the person had committed retail fraud in the first, second or third degree, regardless of whether the violation was committed in her presence. MCL 764.16(d); MCL 750.356c; MCL 750.356d.